HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.15345 OF 2007

Between:

Eswaripuri Colony Welfare Association

. . .Petitioner

AND

Greater Hyderabad Municipal Corporation and another

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri M.V.S.Suresh Kumar

Counsel for respondent No.1 : Shri Polisetty Radhakrishna

Counsel for respondent No.2 : Shri D.Prakash Reddy
Senior Advocate assisted by
Shri P.Sridhar Reddy

3rd August, 2007

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PER G.S.SINGHVI, CJ

Eswaripuri Colony Welfare Association through its President – Shri T.Ramaiah has filed this writ petition in public interest for grant of following substantive reliefs:

> "Hence, it is prayed that this Hon'ble Court may be pleased to issue Writ of Mandamus
>
> a) declare the action of the 2nd respondent in changing the nature of the park situated in the north-west side of the layout in Sy.Nos.591, 595 and 596 situated at Kapra village, Keesara Mandal, Ranga Reddy District as illegal, unjust by declaring the sale deeds dated 9.6.1989, 3.7.1989, 22.5.1989 and 22.5.1989 in the favour of 2nd respondent and his predecessors in title as void;
>
> b) declare the very institution of the suit O.S.No.545/2007 filed by the 2nd respondent on the file of the Court of 1st Additional District Judge, Ranga Reddy District as misconceived and not maintainable on account of the merger of Kapra Municipality with Greater Hyderabad Municipal Corporation and also on account of non-compliance of mandatory provisions of Section 685 of the Hyderabad Municipal Corporation Act, 1955."

On 19.07.2007, this Court after hearing learned counsel for the petitioner and Shri P.Radhakrishna, one of the learned Standing Counsel for Greater Hyderabad Municipal Corporation passed the following order:

> "In this petition, the petitioner has prayed for restraining respondent No.2 from changing the nature of park situated in North West side of layout in Survey Nos. 591, 595 and 596 situated at Kapra Village, Keesara Mandal, Ranga Reddy District and for quashing the proceedings of O.S.No.545 of 2007 pending in the Court of the I Additional District Judge, Ranga Reddy District.

We have heard Shri M.V.S. Suresh Kumar and perused the record.

A perusal of Exs.P.2 and P.3 shows that the area in which respondent No.2 has undertaken construction activity was earmarked as open space in the layout of Eswaripuri Colony at Kapra Village. However, owners of the land appears to have sold the same to respondent No.2 by registered sale deeds executed in 1989. After about 18 years, respondent No.2 started construction activity. When this was objected to, respondent No. 2 filed suit for injunction in the Court of Junior Civil Judge, Ranga Reddy District at Medchal. The petitioner association got itself impleaded as party, but the suit was withdrawn by respondent No.2. Soon thereafter, he filed another suit in the Court of the I Additional District Judge, Ranga Reddy District along with I.A.No.1209 of 2007 without impleading the petitioner as party and the Presiding Officer of the Court passed the following order on 25.06.2007.

" Respondent called absent. Service against respondent is hold good. Respondent is set ex parte. Heard. Petition is allowed as prayed for."

We have our serious reservation not only on the legality but also the justification of such an interim order. It appears to us that the Presiding Officer is either totally oblivious of the law or has no respect for the fundamentals and basics of the ingredients which are required to be satisfied for entertaining an application for interim injunction like the one filed by respondent No.2. We are also skeptical about the fairness of the officers of the municipality. However, while reserving our comment and observation for future, we deem it proper to issue notice to the respondents to show cause as to why the writ petition may not be admitted and finally disposed of.

Notice be issued to the respondents for 03.08.2007.

Shri P. Radha Krishna, one of the Standing Counsel of Greater Hyderabad Municipal Corporation (Kapra Municipality area has merged in Greater Hyderabad Municipal Corporation) accepts notice on behalf of respondent No.1.

Personal service is permitted on respondent No.2.

While issuing notice to the respondents, we deem it proper to take cognizance of a disturbing phenomenon regularly witnessed by the Court namely non-appearance of the counsel appointed by the State Government and various public bodies to defend the public cause in different Courts. Like in the present case, in a large number of cases involving local bodies, the counsel engaged by the

concerned body do not appear in the Court and, thereby, facilitate passing of interim and even final orders adversely affecting public interest. Therefore, we request the learned Government Pleader for Municipal Administration to take notice. He should get in touch with Principal Secretary, Municipal Administration and Commissioner, Greater Hyderabad Municipal Corporation for evolving a scheme under which there is a foolproof assurance of appearance by the counsel, who are engaged by the municipal bodies of the State to defend the public cause. It needs no emphasis that non-appearance of the counsel representing the local bodies, at times, results in passing of orders which have great adverse impact on the public interest.

Shri P. Dayakar Reddy, I Additional District Judge, Ranga Reddy District is directed to submit his explanation in writing under what circumstances he passed order of injunction ignoring the law laid down by this Court that in such matters officers must pass interim orders after careful consideration of the factors like prima facie case, balance of convenience, irreparable injury and over all public interest."

In furtherance of the notice issued by the Court, respondent No.2 has filed counter-affidavit.

We have heard learned counsel for the parties.

There is no dispute between the parties that interim injunction passed by I Additional District Judge, Ranga Reddy in O.S.No.545 of 2007 filed by respondent No.2 has been vacated and there does not subsist any injunction in favour of respondent No.2.

Shri D.Prakash Reddy, Senior Counsel appearing for respondent No.2 gave out that his client will implead the petitioner association as party in the suit so that it may project its cause before the competent civil Court. Simultaneously, he made a request that the Court may direct the parties to maintain status quo in respect of the disputed land, as it is obtaining today.

Shri P.Radhakrishna, learned counsel appearing for respondent No.1 produced a photograph in the Court showing the demolished compound wall, which according to the learned counsel, had been constructed by respondent No.2.

By taking note of the statements made by the learned counsel, we deem it proper to dispose of the writ petition with the direction that on its impleadment as party in O.S.No.545 of 2007, the petitioner shall be entitled to file written statement and contest the suit filed by respondent No.2 by raising all available legal points. We also consider it proper to direct that till the final disposal of the suit, the parties shall maintain status quo as it is obtaining today. This would necessarily mean that there shall be no change in the physical character of the disputed land and neither party shall alienate the same to any one in any manner whatsoever. Ordered accordingly.

As a sequel to disposal of the main petition, WPMP Nos.19908 and 19382 of 2007 filed by the petitioner are disposed of as infructuous.

G.S.SINGHVI, CJ

3rd August, 2007

C.V.NAGARJUNA REDDY, J

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